

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 639

Introduced by Assembly Member Norby

February 16, 2011

An act to amend ~~Sections~~ *Section* 11471 and 11495 of, and to add Section 11471.2 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 639, as amended, Norby. Controlled substances.

Existing law provides that in all cases where property used or intended to be used to facilitate any violation of specified controlled substance offenses is seized and forfeited to a state or local governmental entity and, where necessary, sold, the moneys forfeited or the proceeds of sale shall be distributed by the state or local governmental entity to specified persons or entities for specified purposes, including for the purpose of combating drug abuse.

Existing law, the Uniform Controlled Substances Act, includes provisions authorizing the seizure and forfeiture of property involved in, or purchased with the proceeds from, a controlled substance offense.

This bill would provide that property is deemed to be seized whenever any agency takes possession or control of it. The bill would add provisions that provide that seizing agencies or prosecuting attorneys authorized to bring civil forfeiture proceedings shall not directly or indirectly transfer seized property, including any property seized by

state or local law enforcement officers who are detached to, deputized or commissioned by, or working in conjunction with, a federal agency to any federal agency or any governmental entity not created under and subject to state law, unless the court enters an order, as specified, authorizing the property to be transferred. The bill would provide that, where a state or local agency transfers seized property to any federal agency for forfeiture in violation of these provisions, the state or local agency shall be liable to the state in an action brought by the Attorney General *or a private attorney* for 24% of the proceeds received by the state or local agency from the federal government ~~and would provide that the funds would be required, to be deposited in the General Fund for expenditure, upon appropriation by the Legislature, for drug prevention and treatment services, and would authorize the recovery of the costs of the suit by the Attorney General or the private attorney.~~

~~Existing law provides that each year the Attorney General shall publish a report that sets forth specified information regarding forfeiture actions.~~

~~This bill would provide that the report shall be published in book form and made publicly accessible by electronic means, if feasible, and shall include other specified information.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11471 of the Health and Safety Code is
- 2 amended to read:
- 3 11471. Property is deemed to be seized whenever any agency
- 4 takes possession or control of it. Property subject to forfeiture
- 5 under this division may be seized by any peace officer upon process
- 6 issued by any court having jurisdiction over the property. Seizure
- 7 without process may be made if any of the following situations
- 8 exist:
- 9 (a) The seizure is incident to an arrest or a search under a search
- 10 warrant.
- 11 (b) The property subject to seizure has been the subject of a
- 12 prior judgment in favor of the state in a criminal injunction or
- 13 forfeiture proceeding based upon this division.
- 14 (c) There is probable cause to believe that the property is directly
- 15 or indirectly dangerous to health or safety.

1 (d) There is probable cause to believe that the property was used
2 or is intended to be used in violation of this division.

3 (e) Real property subject to forfeiture may not be seized, absent
4 exigent circumstances, without notice to the interested parties and
5 a hearing to determine that seizure is necessary to preserve the
6 property pending the outcome of the proceedings. At the hearing,
7 the prosecution shall bear the burden of establishing that probable
8 cause exists for the forfeiture of the property and that seizure is
9 necessary to preserve the property pending the outcome of the
10 forfeiture proceedings. The court may issue seizure orders pursuant
11 to this section if it finds that seizure is warranted or pendente lite
12 orders pursuant to Section 11492 if it finds that the status quo or
13 value of the property can be preserved without seizure.

14 (f) Where business records are seized in conjunction with the
15 seizure of property subject to forfeiture, the seizing agency shall,
16 upon request, provide copies of the records to the person, persons,
17 or business entity from whom the records were seized.

18 ~~SECTION 1.~~

19 SEC. 2. Section 11471.2 is added to the Health and Safety
20 Code, to read:

21 11471.2. (a) Any property seized by state or local law
22 enforcement officers who are detached to, deputized or
23 commissioned by, or working in conjunction with, a federal agency
24 shall remain subject to the provisions of this section.

25 (b) (1) Seizing agencies or prosecuting attorneys authorized to
26 bring civil forfeiture proceedings under this chapter shall not
27 directly or indirectly transfer seized property to any federal agency
28 or any governmental entity not created under and subject to state
29 law, unless the court enters an order, upon petition of the
30 prosecuting attorney, authorizing the property to be transferred.

31 (2) Where a state or local agency transfers seized property to
32 any federal agency for forfeiture, directly or indirectly, in violation
33 of this subdivision, the state or local agency shall be liable to the
34 state in any action brought by the Attorney General *or a private*
35 *attorney* in an amount equal to 24 percent of the proceeds received
36 by the state or local agency from the federal agency. Moneys
37 awarded in the action shall be deposited in the General Fund for
38 allocation pursuant to subparagraph (C) of paragraph (2) of
39 subdivision (b) of Section 11489 of the Health and Safety Code.

1 The Attorney General *or private attorney* may recover the cost of
2 suit in this type of action.

3 (c) The court may not enter an order authorizing a transfer unless
4 one of the following conditions exists:

5 (1) It reasonably appears that the activity giving rise to the
6 investigation or seizure is interstate in nature and sufficiently
7 complex to justify a transfer.

8 (2) The seized property may only be forfeited under federal law.

9 (3) Pursuing forfeiture under state law would unduly burden
10 prosecuting attorneys or state law enforcement agencies.

11 (d) Prior to entering any order to transfer property pursuant to
12 this section, the court shall provide the owner of the property a
13 right to be heard with respect to that transfer.

14 ~~SEC. 2. Section 11495 of the Health and Safety Code is~~
15 ~~amended to read:~~

16 ~~11495. (a) The funds received by the law enforcement agencies~~
17 ~~under Section 11489 shall be deposited into an account maintained~~
18 ~~by the Controller, county auditor, or city treasurer. These funds~~
19 ~~shall be distributed to the law enforcement agencies at their request.~~
20 ~~The Controller, auditor, or treasurer shall maintain a record of~~
21 ~~these disbursements which records shall be open to public~~
22 ~~inspection, subject to the privileges contained in Sections 1040,~~
23 ~~1041, and 1042 of the Evidence Code.~~

24 ~~(b) Upon request of the governing body of the jurisdiction in~~
25 ~~which the distributions are made, the Controller, auditor, or~~
26 ~~treasurer shall conduct an audit of these funds and their use. In the~~
27 ~~case of the state, the governing body shall be the Legislature.~~

28 ~~(c) Each year, the Attorney General shall publish a report, in~~
29 ~~book form and made publicly accessible by electronic means, if~~
30 ~~feasible, which sets forth the following information for the state,~~
31 ~~each county, each city, and each city and county:~~

32 ~~(1) The number of forfeiture actions initiated.~~

33 ~~(2) The number of cases and the administrative number or court~~
34 ~~docket number of each case for which forfeiture was ordered or~~
35 ~~declared.~~

36 ~~(3) The value of the assets forfeited.~~

37 ~~(4) The recipients of the forfeited assets, the amounts received,~~
38 ~~and the date of the disbursement.~~

39 ~~(5) The number of forfeiture actions initiated under federal law~~
40 ~~in which a state or local agency had a role, and a description of~~

1 the role served in each federal forfeiture action by each
2 participating state or local agency. The description shall include,
3 but not be limited to, the following information:

4 (A) The date of the seizure; the date of transfer of the case from
5 state or local authorities to federal authorities, if applicable; and
6 the date on which forfeiture was ordered or declared.

7 (B) The case number assigned to each federal forfeiture action
8 by federal authorities, if known.

9 (C) Whether the state or local agency originated information
10 leading to a seizure or federal forfeiture action.

11 (D) Whether the state or local agency supplied unique or
12 indispensable assistance to the federal forfeiture action, and a
13 description of the assistance.

14 (E) The number of hours expended by the state or local agency
15 on the case.

16 (F) Whether a federal agency has classified the federal forfeiture
17 case as a “joint” seizure and forfeiture action, or as an “adoption”
18 by federal authorities of a case initiated by a state or local agency,
19 if that federal classification is known.

20 (6) The value of assets forfeited under federal law in each case
21 in which a state or local agency had a role.

22 (7) The value of all shares of assets forfeited under federal law
23 that are returned to a state or local agency that had a role in the
24 federal forfeiture action, and the date of receipt of the shares.

25 (8) A complete description by state and local agencies that
26 receive assets forfeited under federal law of the purposes for which
27 all the forfeited assets were designated or used, and the dates of
28 all disbursements for each purpose.

29 (d) The Attorney General shall develop administrative guidelines
30 for the collection and publication of the information required in
31 subdivision (e).

32 (e) The Attorney General’s report shall cover the calendar year
33 and shall be made no later than March 1 of each year beginning
34 with the year after the enactment of this law, except that the portion
35 of the report setting out the data and information required by
36 paragraphs (5) to (8), inclusive, of subdivision (e) shall be made
37 no later than March 1, 2013, and by that day every year thereafter.